IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGRH

C.W.P. No.16076 of 2006
Date of decision:October 10,2006

Punjab Cotton Factories and Ginners Association V. State of Punjab and others

CORAM: HON'BLE MR. JUSTICE VINEY MITTAL
HON'BLE MR.JUSTICE H.S.BHALLA

Present: Shri S.C.Pathela ,Advocate, for the petitioner.

Viney Mittal,J.

The petitioner, Punjab Cotton Factories & Ginners Association is an Association of Cotton Factories and Ginners in the State of Punjab. They have filed the present petition challenging the proviso to Section 30 of Punjab Agricultural Market Produce Act, 1961 (hereinafter referred to as the “Act”) and Rules 2(11), 24(9), 24(12) and 24-A of the Punjab Agricultural Produce Markets (General) Rules,1962 (hereinafter referred to as the “Rules”). The petitioner-Association has pleaded that its members have mills within the State of Punjab and they purchase cotton in the market yards within the notified market areas in the State of Punjab. The cotton purchased by them is processed, ginned and pressed in their factories before converting the same to yarn in the Spinning Mills or Textile Industries. According to the petitioner-Association, its members have obtained licences from the Secretary, Punjab Mandi Board, under Section 10 of the Act. The aforesaid members purchase cotton bought by the sellers within the notified market areas in the public auction and make payment of the price of the cotton purchased, market fee, RDF etc. Beside the above charges, the members of the petitioner-Association are

also required to pay the market charges for the services rendered in connection with the handling of agricultural produce after finalization of the bid at the auction. Rule 2(11) of the Rules defines market charges as under :

> " 2(11) "Market Charges" means all charges payable by the buyer in lieu of the services rendered in connection with the handling of agricultural produce after the finalization of the bid at auction, such as, the commission of Kacha Arhtiya, brokerage, auction charges, remuneration for palledari, filling, weighing, sewing and loading."

The petitioner-Association claims that the members of the Association are required to pay the market charges payable by the buyers, a charge which in normal circumstance should not have been paid by them. The petitioner-Association has challenged the vires of the proviso to Section 30 of the Act. Section 30 of the Act reads as follows :

> **"30. No trade allowance permissible except as prescribed**
>
> No trade allowance, other than an allowance permitted by rules or bye-laws made under this act, shall be made or received in a notified market area by any person in any transaction in respect of the agricultural produce concerned and no Civil Court shall, in any suit or proceeding arising out of any such transaction, recognise any trade allowance not so permitted.
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> Provided that all market charges shall bepaid bythe buyers."

The petitioner-Association has also challenged the vires of Rules 24(9), 24(12) and 24-A of the Rules. For the sake of ready reference, the aforesaid rules are reproduced as below :

"24(9) The buyer shall be responsible to get the agricultural produce weighed immediately after the auction or on the same day the produce is purchased by him and the seller or the buyer shall be liable for any damage to, or loss of, or deterioration in, the produce after the auction according to the local usage or custom or as per provision of rule 13."

"24(12) Every Kacha Arhtiya shall, on delivery of agricultural produce to a buyer, execute a memorandum in Form I and deliver the same to the buyer on the same day or the following day, mentioning sale proceeds plus market charges admissible under rules and bye-laws. The counterfoil shall be retained by the Kacha Arhtiya.

Provided that nothing in this Sub Section shall apply where agricultural produce, being vegetable or fruit, not exceeding one quintal in weight is delivered."

"24-A Commission of Kacha Arhtiya

The Commission of Kacha Arhtiya for services rendered in connection with the sale, purchase, storage and processing of agricultural produce mentioned below, shall be paid at the following rates,namely:.....

xxxxxx.....

xxxxxx....."

According of the petitioner-Association, the purposes of the Act and the Rules is to regulate sale purchase of the agricultural produce in the notified market area or the market yard but the effect thereof is to control the sale purchase of agricultural produce itself, which, according to the petitioner-Association, amounts to imposing unreasonable restrictions on the business of the members of the petitioner-Association to carry on their trade as guaranteed to them under Article 19(1)(g) of the Constitution

of India. It has also been claimed by the petitioner-Association that a Commission agent is an agent of the seller who provides various services to the seller and, thus, if he is entitled to any commission, it is only from the seller and the buyer cannot be held liable to pay the same. According to the petitioner-Association, all the services are rendered at the behest and instance of the seller and the buyers have no role to play therein. To elaborate the aforesaid challenge, the petitioner-Association has claimed that the buyers cannot be held liable to pay the charges of the services which are in fact prior to the finalisation of the price of the produce. It has been claimed that all the services are rendered by the commission agent prior to the finalization of the auction and sale. The petitioner-Association also claims that Kacha Arhtiyas are engaged by the seller for sale of their produce and, therefore, the buyers have no role to play in the aforesaid relationship of Kacha Arhtiya with the seller.

We have heard Shri S.C. Pathela, learned counsel for the petitioner-Association at some length.

All the pleas and grounds of attack pleaded in the petition have been reiterated during the course of arguments by the learned counsel. On the basis of the aforesaid argument, learned counsel has maintained that proviso to section 30 of the Act was violative of the provision of Article 19(1)(g) of the Constitution of India and the provisions of rules 24(9),24(12) and 24-A of the Rules were not only violative of the Constitution of India but were also ultra vires of various provisions of the Act.

We have duly considered the aforesaid arguments raised on behalf of the petitioner-Association.

We find that the controversy raised by the petitioner-Association is not res-integra.

An identical challenge to proviso to section 30 of the Act and

various rules and bye-laws was raised before a Division Bench of this Court in Murari Lal Sharma V. State of Punjab and others C.W.P. No.1444 of 1963 decided on August 24,1966.

In Murari Lal Sharma's case(supra), it was maintained by the petitioner in that case that he is a licensee and a dealer under the Act and, as such, cannot have any other capacity i.e . he cannot have a capacity of a functionary. Consequently, it was claimed that the provisions of the Act, rules and bye-laws, when he was required to pay such market charges, including the commission of Kacha Arhtiya and brokerage are illegal and violative of his fundamental rights as a buyer under Article 19(1)(f) and (g) of the Constitution of India. The aforesaid contentions raised on behalf of the aforesaid petitioner, Murari Lal Sharma, were rejected by the Division Bench by holding that the facilities provided in a market were not only for the sellers, but also for the buyers, who may be dealers too, and others coming to the market for business available therein. Reliance in this regard was placed by the Division Bench on a judgment of the Apex Court in Mohammad Hussain -Gulam Mohammad V. The State of Bombay, AIR 1962 SC 97.

Dealing with the matter in detail with regard to the liability of the buyers to pay the market charges, the Division Bench observed as follows :

> “In so far as the second contention is concerned, it appears that it is obviously mistaken. The learned counsel for the petitioner seems to think that, within the scope of the definition of the expression 'trade allowance' in section 2(s) of the Act, market charges are payable to functionaries only and then considers that because of rule 22 a dealer cannot be both a dealer and a functionary and,therefore, market charges are not payable by a dealer as the petitioner. It is not appreciated

that the definition of the expression 'trade allowance' is merely inclusive and not exhaustive. It includes market charges payable to functionaries, but that does not mean that market charges payable by dealers or buyers are outside that definition. It is then said by the learned counsel for the petitioner with reference to rule 2(11) that all the market charges referred to in that definition relate to a stage after the finalisation of the auction and after that stage in the transaction the buyer has no reason to pay anything because by that time at least the seller shall have already paid to the kacha artitya his commission and to the broker his brokerage. In rule 24(11) it is provided that the kacha arhtiya shall make payment to the seller immediately after the weighment is over and in clause (9) of the same rule it is stated that the buyer shall be responsible to get the agricultural produce weighed immediately after the auction of on the same day the produce is purchased by him, and then clause (12) says that every kacha arhtiya shall, on delivery of agricultural produce to the buyer, execute a memorandum in Form I and deliver the same to the buyer on the same day or the following day, mentioning sale proceeds plus market charges admissible under rules and bye-laws, and this is followed by clause (13) of the same rule that in the absence of any written agreement to the contrary the sale price of agricultural produce purchased under the rules shall be paid by the buyer to the kacha arhtiya on delivery of Form I. When these clauses of rule 24 are considered together,it becomes immediately clear that all those matters as are referred to in the definition of the expression ' market charges' in rule 2(11), to be done by the

functionaries after the finalisation of the bid at the auction, are done at the instance and expense of the buyer. It follows that it is the buyer who is to pay market charges, and as much is clearly stated in the definition of the expression in rule 2(11). Nothing in the Rules leads to a contrary conclusion. This definition and none of the rules referred to contravene either section 2(s) or section 30 of the Act. In so far as section 2(s) is concerned,it has already been stated that the definition is inclusive and not exhaustive, and so far as section 30 is concerned, the proviso to it clearly says that all market charges shall be paid by the buyer....."

The Division Bench in Murari Lal Sharma's case (supra) further noticed another Divis;ion Bench judgment in Gokal Chand-Nathi Ram V. The State of Punjab 1963 P.L.R. 887 to support the conclusion arrived at by it. The following observations in Gokal Chand Nathi Ram's case (supra) were also relied upon:

" ..... This is the right guaranteed by sub-clause (g) of clause (1) of Article 19 of the Constitution. Clause (6) of that Article provides that nothing in sub-clause (g) shall affect the operation of any existing law in so far as it imposes, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by this sub-clause. On behalf of the State it is contended that inasmuch as according to the custom of the trade, the dealer could charge commission either from the buyer or the seller but not from both, there would really be no restriction in providing that he should charge commission from the buyer and not the seller. Further it is pointed out in the return that even if this be construed as a restriction, it is a reasonable restriction within the meaning of

clause (6) of Article 19. The kacha arhtiya has to do a lot of work for the buyer. The producers have to pay incidental charges, that is, charges incurred before the auction is held. After the auction is over, the kacha arhtiya has to do everything for the buyer,for instance he has to get the produce weighed, filled in the bags of the buyer, get the bags stitched, etc. Moreover it is a general practice in the markets that the kacha arhtiya makes payment to the seller on behalf of the buyer without his having received actual payment from the buyer.(This, as has been shown is specifically provided in rule 24(11) and (13)). Thus the kacha arhtiya invests money in order to safeguard the interest of the buyer and renders a great deal of assistance to him. The buyer is an educated person who can conveniently keep the accounts of the commission, while the seller, who is usually the grower, is frequently an illiterate person liable to be exploited. In view of all this it is reasonable that the commission be charged from the buyer by the commission agents. In this connection reference was made to Statement of Objects and Reasons of Punjab Act No.5 of 1939, as published in the Punjab Gazette, extraordinary, dated the Ist day of July 1938, at page 98, in which it was particularly mentioned that the object of the legislation was to eliminate various malpractices to which the producer was subjected when he went to sell his produce in the Mandis and to eliminate the various charges which;h were levied from him under one pretext or the other...."

In another Division Bench judgment, in the case of Messrs Ch.Surja Ram and Sons Ginning and Pressing Factory, Malout V. The Punjab State and others (1971)1 ILR Punjab and Haryana 172, the

challenge made to the vires of proviso to section 30 of the Act and various Rules , bye-laws was also repelled.

Once again, another Division bench in the case of M/s.Nathu Ram-Roshan Lal Loona V. Punjab State and others (1971)1 ILR Punjab and Haryana 529 relied upon the judgments in Murari Lal Sharma's case and M/s. Ch. Surja Ram and Sons's case and again repelled the challenge to proviso to section 30 of the Act being void and ultra vires of Article 19 (1)(f) and (g) of the Constitution of India.

We see absolutely no reason and justification to differ with the judgments of the three Division Benches, as noticed above, and are in respectful agreement with the same.

Consequently, we find no merit in the present petition. The same is dismissed.

(Viney Mittal)
Judge

(H.S.Bhalla)
Judge

October 10,2006
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